

**AMENDMENT NO. 2 TO
DOMESTIC TERMINALS FOOD AND BEVERAGE LEASE NO. 03-0193
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 2 TO DOMESTIC TERMINALS FOOD AND BEVERAGE LEASE NO. 03-0193 AT THE SAN FRANCISCO AIRPORT (“Amendment No. 2”), dated as of August 13, 2013 for reference purposes only, is entered by and between the between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “City”), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (the “Airport”), as landlord, and Gotham Enterprises, LLC, as tenant (the “Tenant”).

RECITALS

A. The Airport and Tenant entered into Lease No. 03-0139, approved by Airport Commission Resolution No. 03-0139 on September 29, 2003, (the “Original Lease”) for certain food and beverage space located at the Airport in Terminal 3.

B. Under the Original Lease Section 2.5, on May 22, 2009, the Airport Commission approved the early exercise of the option term of the Lease

C. As part of the Airport's ongoing facilities improvement efforts, on or about February 10, 2014, the Airport will close the base building terminal between Gates 68 through 71 to commence the Terminal 3 East expansion (“T3 East”) for approximately eighteen calendar months for major renovations (“Renovation Period”), and a complete demolition of Tenant’s original premises is required.

D. Airport Food and Beverage Concession Leases provide that the Tenant pays annual rent to City equal to the higher of a “Minimum Annual Guarantee” (MAG) or percentage of gross revenues. Pursuant to Airport Commission Resolution No. 13-0177, the Airport Commission approved certain amendments to the Lease such as replacement premises, reimbursement of unamortized construction investments, new commencement date, suspension and reinstatement of the Minimum Annual Guarantee, Tenant Infrastructure Fee, and Food Court Fee during the Renovation Period and other related provisions, on the terms and conditions set forth herein.

E. On January 30, 2013, the Airport Commission approved Amendment No. 1 under Resolution No. 13-0015, approving the permanent closure of Tenant’s facility in Terminal 1, and revised the MAG.

F. The Original Lease, as amended by Lease Amendment No. 1 and by this Amendment No. 2 shall be referred to from time to time collectively herein as the “Lease”.

G. Airport and Tenant agree to the amendments set forth in this Lease Amendment No. 2. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Tenant hereby agree to amend the Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference as if fully set forth herein.
2. **Effective Date.** The effective date of the modifications to the Lease contained in this Lease Amendment No. 2 shall be the date upon which the Airport Director executes this amendment.
3. **Lease Summary.** The Lease Summary is hereby deleted in its entirety and replaced with the Attachment 1 titled "Major Lease Term Summary", attached hereto and made a part of this Lease that identifies New Premises; an Adjusted Term; Adjusted Dates; an Adjusted Minimum Investment Amount; an Adjusted Tenant Infrastructure Fee; and, an Adjusted Food Court Fee and Reimbursement of Unamortized Construction Costs.
4. **Premises.** Exhibit A is hereby deleted in its entirety and replaced with the following:

"Exhibit A – Premises. A total of two facilities comprising approximately 1,159 square feet of concession space located in Terminal 1 and Terminal 3 of the San Francisco International Airport, as described on the attached drawings and broken down as follows:"

<u>Space No.</u>	<u>Terminal</u>	<u>App. Sq. Ft.</u>	<u>Food Court</u>
T3.3.020 A	3	477	Yes
T3.2.046	3	682	Yes

5. **Term.** Section 2.5, City's Right to Extend the Term, is hereby deleted in its entirety.
6. **Expiration.** Lease shall expire at 11:59pm on the day prior to the **tenth (10)** anniversary of the Full Rent Commencement Date.
7. **Rent.** Section 4.14 Terminal 3 East (T3 East) Renovation is hereby included as part of the Lease and shall read as follows:

4.14 T3 East Renovation. T3 East in Terminal 3 will undergo major renovations, which requires the closure of Tenant's operation.

- (a) T3 East Renovation Period. The Renovation Period, as defined in Recital Paragraph C above, shall commence in or around on February 10, 2014, continue for approximately eighteen calendar months and shall end when the Airport Director, in his sole and absolute discretion, determines that the renovations are complete.
- (b) Minimum Annual Guarantee (“MAG”) and Other Fees. During the Renovation Period, the MAG, Tenant Infrastructure Fee, and Food Court Fee shall be suspended for Tenant’s facility in T3 East. The MAG for Tenant’s other location in Terminal 3 shall be calculated based on its square footage multiplied by the current rate.
- (c) MAG Reinstatement. At the end of the Renovation Period, the MAG shall be reinstated. The MAG shall be subject to annual adjustments as specified in Lease Section 4.
- (d) Tenant Infrastructure Fee and Food Court Fee Reinstatement. At the end of the Renovation Period, the Tenant Infrastructure Fee and Food Court Fee shall be reinstated for the location in T3 East in accordance with the Lease.

8. A new Lease Section 19.28 is hereby added to the Lease:

"Lease Section 19.28 Airport’s Sustainable Food Guideline. In compliance with Executive Directive No. 09-03 issued by the Office of the Mayor on July 9, 2009, the Airport has established a 16-point Sustainable Food Guideline (the “Airport’s Sustainable Food Guideline”) that promotes public health, environmental sustainability, and social responsibility.

A. The following must be adhered to throughout the term of the Lease.

Tenants must feature:

- 1. Displays that promote healthy eating and good environmental stewardship
- 2. Visible food preparation areas
- 3. Portion sizes which support good health
- 4. Portion-appropriate menu items for children

Tenants must use:

- 5. Low- or non-phosphate detergents
- 6. Compostable, bio-resin bottles or paper boxes for all bottled water sales
- 7. Un-bleached paper products and compostable To Go containers and utensils

To the very greatest extent possible, Tenants must use:

- 8. Organic agricultural products from the Northern California region
- 9. Agricultural products that have not been genetically modified
- 10. Organic or all-natural meat from animals treated humanely and without hormones or antibiotics
- 11. rBST-free cheese, milk, yogurt and butter
- 12. Cage-free, antibiotic-free eggs"

9. **Reimbursement.** The City shall reimburse the Tenant for the unamortized cost of improvements to the original premises in an amount not to exceed Twenty Three Thousand Two Hundred and Three Dollars (\$23,203), based on the revised closure date of February 10, 2014, and subject to the memorandum on file with the Airport Commission Secretary for Resolution No.13-0177, incorporated herein by reference and made a part of this Lease.

10. **Entire Agreement.** This Amendment No. 2 contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 2 are superseded in their entirety by this Amendment No. 2. No prior drafts of this Amendment No. 2 or changes between those drafts and the executed version of this Amendment No. 2 shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment No. 2.

11. **Miscellaneous.** This Amendment No. 2 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 2 is made for the purpose of setting forth certain rights and obligations of Tenant and the Airport, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

Each party hereto shall execute, acknowledge, and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment No. 2. This Amendment No. 2 may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment No. 2 that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment No. 2. This Amendment No. 2 shall be governed by the laws of the State of California. Neither this Amendment No. 2 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

12. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

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IN WITNESS WHEREOF, the Airport and the Tenant execute this Amendment No. 2 to the Lease as of the last date set forth below.

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
acting by and through its Airport Commission

John L. Martin LF w
Airport Director

TENANT: Gotham Enterprises, LLC
SFO Coffee IV-VI Series
a Delaware Limited Liability Company

By: _____ 6.25.14
Name: Glenn Meyers
Title: Managing Member

AUTHORIZED BY
AIRPORT COMMISSION

Resolution No. 13-0177
Adopted: August 12, 2013

Attest: _____
Secretary
Airport Commission

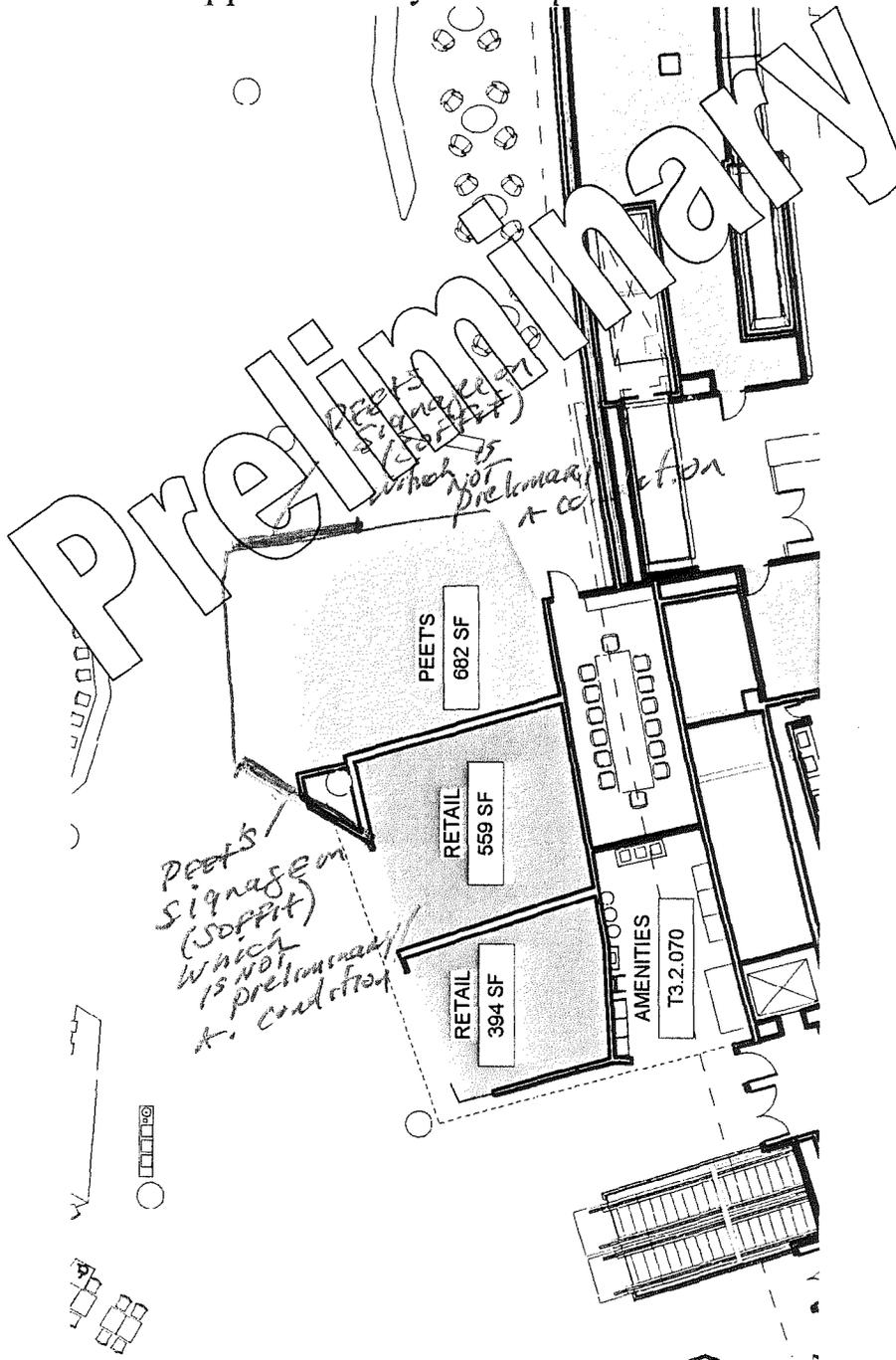
APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: David Sena
Deputy City Attorney

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Exhibit A Premises
T3 East

Space T3.2.046
Approximately 682 Square Feet



**LEASE AGREEMENT
FOR
DOMESTIC TERMINALS FOOD AND BEVERAGE FACILITY(IES)
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

MAJOR LEASE TERM SUMMARY

For the convenience of Tenant and City (as such terms are defined below), this Major Lease Term Summary (this “**Summary**”) summarizes certain terms of this Lease (as defined below). This Summary is not intended to be a detailed or complete description of this Lease, and reference must be made to the other Sections below for the particulars of this Lease. In the event of any inconsistency between the terms of this Summary and any other provision of this Lease, such other provision shall prevail. Capitalized terms used elsewhere in this Lease and not defined elsewhere shall have the meanings given them in this Summary.

Effective Date: August 13, 2004

Tenant: Gotham Enterprises, LLC
SFO Coffee IV-VI Series
a Delaware Limited Liability Company

**Tenant’s Notice
Address:** 133 Stillman Street
San Francisco, CA 94107

Attn: Glenn Meyers
Fax No. (415) 243-8695
Tel. No. (415) 243-8908

City: The City and County of San Francisco, a municipal corporation,
acting by and through its Airport Commission.

**City’s Notice
Address:** San Francisco International Airport
International Terminal, North Shoulder Bldg., 5th Floor
P. O. Box 8097
San Francisco, CA 94128
Attn: Airport Director
Fax No. (650) 821-5005
Tel. No. (650) 821-5000.

**City’s Rent
Payment Address:** San Francisco International Airport
Attn: Accounting
575 N. McDonnell Road, 2nd Floor
P. O. Box 7743
San Francisco, CA 94120

**City’s
Insurance/Deposit
Notice Address:** San Francisco International Airport
Attn: Revenue Development and Management
575 N. McDonnell Road, Suite 3-329
P. O. Box 8097
San Francisco, CA 94128

Summary, Page 1

Premises: The following facilities (each, a "**Facility**") in the Domestic Terminals (each, a "**Terminal**") at the San Francisco International Airport, comprised of approximately **1,159** total square feet of space, as described on the attached **Exhibit A**, broken down as follows:

	<u>Terminal</u>	<u>App. Sq. Ft.</u>	<u>Food Court?</u>
T3.3.020A	3	477	Yes
T3.2.046	3	682	Yes

Relevant Boarding Area: Boarding Area "E" + Boarding Area "F"
(§ 4)

Delivery Date: The date on which Director gives notice to Tenant that a Facility is ready for Tenant to take possession and commence Tenant's Work.
(§ 2)

Term: the Development Term, plus the Operating Term, collectively.
(§ 2)

Development Term: The period commencing on the Delivery Date of the first Facility delivered by City to Tenant (the "**Commencement Date**"), and ending at 11:59 p.m. on the day prior to the Rent Commencement Date for the *last* Facility delivered to the Tenant by City (the "**Full Rent Commencement Date**").

Operating Term: The period commencing on the Full Rent Commencement Date, and ending at 11:59 p.m. on the day prior to the **tenth (10)** anniversary thereof (the "**Expiration Date**").

Adjusted Term: The period commencing on the earlier date of (a) the Replacement Premises is open for business or (b) the majority of gates in Terminal 3 East are occupied as determined by the Airport Director and ending at 11:59 p.m. on the day prior to the tenth (10th) anniversary thereof (the "**Expiration Date**").

Rent Commencement Date: The Rent Commencement Date shall be the date that is the earlier of: (a) the date on which the Tenant's Work (as defined below) is substantially complete and Tenant opens for business therein, and (b) the majority of gates in T3 East are occupied, regardless of whether the tenant is open for business in T3 East.
(§ 4)

Actual dates (to be inserted upon determination)

Commencement Date: **March 15, 2005**
 Development Term: **March 15, 2005 – July 14, 2005**
 Operating Term: **July 15, 2005 – July 14, 2015**
 Expiration Date: **July 14, 2015, 11:59 p.m.**

Delivery Date: _____
 Adjusted Rent Commencement Date: _____
 Adjusted Expiration Date: _____

Reference Year: The calendar year immediately prior to the year in which this Lease is awarded: **2002**.
(§ 4)

- Permitted Use:** The non-exclusive sale of food and beverages for immediate consumption, particularly described on the attached *Exhibit B*. Without limiting the generality of the foregoing, Tenant shall operate the Premises in strict conformity with the requirements herein, including those set forth on *Exhibit B*.
(§ 3)
- Base Rent:** Per Lease Year (as defined below), the greater of the Minimum Annual Guarantee (as defined below) or the following sum (such sum being referred to herein as the "**Percentage Rent**"): (§ 4)
- (a) **8 % of Gross Revenues (as defined below) achieved up to and including \$750,000, plus,**
 - (b) **10 % of Gross Revenues achieved from \$750,000.01 up to and including \$1,400,000, plus,**
 - (c) **12 % of Gross Revenues achieved over \$1,400,000.**
- For purposes of the above formula, the Gross Revenues achieved from all Facilities and all other operations of Tenant under this Lease such as catering to the extent permitted shall be aggregated.
- Lease Year:** The period commencing on January 1 and ending on December 31 of each year. (§ 4)
- Minimum Annual Guarantee:** **Forty Six Thousand Three Hundred Sixty Dollars (\$46,360.00)** (the "**Initial MAG**"), per annum; **Three Thousand Eight Hundred Sixty Three Dollars (\$3,863.00)** per month, based on \$40 a square foot, subject to adjustments upward as described below. (§ 4)
- MAG Adjustment Date:** January 1 of each year (§ 4)
- Rent:** Base Rent, together with all other amount owing by Tenant to City hereunder. (§ 4)
- Deposit Amount:** Equal to one-half (1/2) of the then current MAG (subject to adjustment). (§ 13)
- Minimum Investment Amount:** With respect to each Facility, **TWO HUNDRED FIFTY DOLLARS (\$250.00)** per square foot. Unless otherwise waived by Director, the foregoing Minimum Investment Amount is applicable to each Facility and may not be considered in the aggregate across all Facilities. **Minimum Investment Amount: Six Hundred Fifty Four Thousand Five Hundred Dollars (\$654,500.00).** (§ 7)
- With respect to Replacement Premises Space No. T3.2.046, the Minimum Investment Amount applicable is **Three Hundred Fifty Dollars (\$350.00)** per square foot which equals **Two Hundred Thirty Eight Thousand Seven Hundred Dollars (\$238,700.00).**
- Tenant Infrastructure Fee:** Per Lease Year, **Thirty Nine Thousand Two Hundred Seventy Dollars (\$17,385.00)**, calculated at \$15 per square foot comprising the Premises. Monthly installment: **One Thousand Four Hundred Forty Eight Dollars and Seventy Five Cents (\$1,448.75).** (§ 4)

Food Court Fee: Per Lease Year, **Ten Thousand Two Hundred Thirty Dollars (\$17,385.00)**,
(§ 4) calculated at \$15 per square foot for each Facility (if any) located in a food
court. Monthly installment: **One Thousand Four Hundred Forty Eight
Dollars and Seventy Five Cents (\$1,448.75)**. [The Food Court Fee is not
applicable to any Facility not located within a food court.]

Initial Promotional Charge **One Thousand One Hundred Fifty Nine Dollars (\$1,159.00)**, calculated at
(§ 11) **ONE DOLLAR (\$1.00)** per square foot of the Premises, subject to adjustment.

Resolution: Number **13-0177**, approved by the Airport Commission on **August 12, 2013**.

Initial Tenant Representative: **Glenn Meyers**
(§ 3) Tel. No. **(415) 243-8908**

Other Agreements: L99-0292J, L03-0069, L03-0069A, & L10-0030
(§ 14)

Exhibits: A – Premises
B – Use and Operational Requirements
C-1 – Form of Performance Bond
C-2 – Form of Letter of Credit
D – Form of Annual Certificate
E – Work Letter
All such exhibits are incorporated into this Lease and made a part hereof.

Initial of Authorized Representative of City _____

Initial of Authorized Representative of Tenant _____ 